



CORONAVIRUS RELIEF FUND

“OPEN” BUSINESS GRANT AGREEMENT

This “OPEN” Business Grant Agreement (“Agreement”) is entered into by and between Denton County, Texas (the “County”) and [_____], a small business located in Denton County, Texas (the “Business”) to address the impact of the public health emergency with respect to the Coronavirus pandemic (“COVID-19”).

THE FEDERAL GOVERNMENT: CORONAVIRUS RELIEF FUND

1. The County received federal funding under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) to address and respond to the impact and effects of the COVID-19 emergency. The County received funds from the U.S. Department of the Treasury (the “Treasury Department”) under the Coronavirus Relief Fund (“CRF”), as provided for in the CARES Act. *See CRF Guidelines, Regulations (including statute, FAQs, and Guidance, as updated from time to time)* (updated June 30, 2020).
2. Inspector General Oversight & Recoupment. Section 601(f) of the Social Security Act, as added by Section 5001(a) of the CARES Act, provides that the Inspector General of the Treasury shall conduct monitoring and oversight of the receipt, disbursement, and use of CRF funds. If the Inspector General determines that a unit of local government has failed to comply with the use of funds rules (as described herein in Paragraphs 12 - 16, “Use of Funds”), the amount of CRF funds in noncompliance shall be “booked as a debt of such entity owed to the federal government.” The conditions and restrictions on the use of the CRF funds follows to all recipients that receive such funds, including the Business. In the event CRF funds are used by the Business for Ineligible Expenditures, the County has the right to seek all remedies available to it at law to recoup such funds from Business and the Responsible Party, as defined in Paragraph 22.
3. Sub- Recipient Liability. Treasury guidelines make clear that the Treasury Department shall seek to recoup funds from the government entity that received the payment directly from the Treasury Department, even if the funds are retransferred to another entity. The government entity receiving funds from the Treasury Department is required to ensure that funds transferred to another entity are used in compliance with section 601(d) of the Social Security Act.

DENTON COUNTY:
OPEN BUSINESS GRANT PROGRAM

4. County Authority. The Denton County, Texas Commissioners Court, under Chapter 381 of the Local Government Code, lawfully established a COVID-19 small business funding program, *Denton County Operational Plan for Economic Normalization (“OPEN”) Business Grant Program* (Phase 2) (hereinafter “OPEN Program”). The use of these CRF funds to reimburse the demonstrable costs of business interruption caused directly by the effects of COVID-19 is a legitimate and lawful use of the CRF funds.
5. Economic Hardship Caused by COVID-19. Due to the measures taken to prevent the spread of COVID-19, many small businesses in the County have suffered and continue to suffer losses that threaten their survival. An urgent public need exists to financially assist these businesses, and in particular, the jobs that they provide to so many Denton county citizens, through this crisis.
6. Program Rules. The OPEN Program allows for grants to qualified small businesses of up to \$49,500. The award of the grant is based on such factors as need, eligibility, number of employees, loss due to full or partial shutdown during the COVID-19 pandemic, and availability of funds. See *Economic Development Program Rules*.

GRANT

7. Application. Based on the Denton County OPEN Business Grant Program Application of the Business (the “Application”), you demonstrated an economic hardship caused by the COVID-19 pandemic. Your representations and the terms and conditions of the Application are hereby incorporated by reference.
8. Amount. Subject to the terms and conditions of this Agreement, the County agrees to grant and issue a payment to the Business the sum of \$ of its CRF funds (“the Funds”).
9. Calculation of Amount. The calculation of the grant amount was based on the sum of two categories: (Category 1) lost revenues and (Category 2) reimbursement of money spent before Application Date on COVID expenditures (both goods and services). Under the Program Rules, the maximum grant amount that may be awarded is fifty thousand and no/100 dollars (\$50,000). The CARES Act prohibits the award from exceeding the loss experienced by the Business.
10. Payment. Payment will be made by the County by check mailed to the business address on the Application.
11. Separate Business Bank Account. The Business agrees to deposit the Funds into a separate, segregated business account created solely for holding and disbursing the Funds. The Funds cannot be commingled with other accounts of the Business.

USE OF FUNDS

12. **Reimbursement of Business Interruption Costs.** Using the Funds to reimburse your Business for the costs of business interruption or loss caused by the government required closures is an Eligible Use according to the CRF. Likewise, using the Funds to reimburse your Business for the costs of business interruption or loss from voluntary closure to promote social distancing measures or alleviate the effects of decreased customer demand as a result of the COVID-19 pandemic are Eligible Uses under the CRF. For more complete guidance on Eligible Uses, *see CRF Guidelines, Regulations (including statute, FAQs, and Guidance, as updated from time to time)* (updated June 30, 2020).
13. **Specific Examples Cited by OPEN Program Rules.** In addition to the above examples, Eligible Expenditures include those that (1) were, and are, necessary to your Business, (2) were directly incurred due to the COVID-19 pandemic, and (3) concern any of the following (“Eligible Uses” or “Eligible Expenditures”):
- a. Payroll costs for employees or owners draw (sole proprietors/partners);
 - b. Contract labor;
 - c. Supplier payments;
 - d. Rent, lease or interest on mortgage payment (for real property used for business purposes, like storefront or warehouse, excluding personal residence);
 - e. Rent, lease or purchase payment for business property (e.g., delivery vehicle; food truck; kitchen equipment; technology, payment, and communications systems and equipment);
 - f. New or expanded technology applications and Wi-Fi services;
 - g. Utility payments for business properties, excluding personal residence;
 - h. Cost of critical business operations (raw materials, marketing expenses, etc. payments);
 - i. PPE, sanitation supplies and equipment.; and
 - j. Interest on other business debt obligations incurred before March 1, 2020, excluding personal residence.
14. **Ineligible Expenditures.** Funds may not be used for personal uses that are unrelated to your Business and do not alleviate the effects of COVID-19 (“Ineligible Expenditures”).

15. Penalty. Any proceeds spent on an Ineligible Expenditure is subject to “claw back” or recoupment by the County, including attorneys’ fees and costs, as well as other reasonable expenses.
16. Return of Unused Funds by Business. Any Funds not spent on Eligible Expenditures before December 30, 2020 must be returned to the County by February 1, 2021.

RESPONSIBILITIES

17. The responsibilities of the Business are:
- a. to sign and date this Agreement and return it to the County by August 25, 2020;
 - b. to comply with all terms and conditions of the CARES Act;
 - c. to deposit the Funds into a separate, segregated business account created solely for holding and disbursing the Funds (as described in Paragraph 11);
 - d. to use the Funds in compliance with the CARES Act (as described in paragraph 8);
 - e. to maintain proper and adequate records of its own expenses, and supporting documentation of the expenditures, and provide copies of, or access to such, by February 15, 2021; and

REPRESENTATIONS

18. You hereby reaffirm the following representations that you made in your Application:
- a. The Business has no outstanding Denton County tax liens or judgments;
 - b. The Business reaffirms the truthfulness and accuracy of all information contained in the Application;
 - c. The Business reaffirms that it is not an ineligible business, as defined in the Application;
 - d. The Responsible Party of the Business represents that he/she is authorized to execute the required documents and do any and all things set forth in this Agreement; and
 - e. The Responsible Party of the Business reaffirms his/her agreement to subject the business to a potential compliance audit to confirm that the proceeds will be spent on an Eligible Use.

REMEDIES

19. Indemnity. To the extent allowable by law, the Business shall defend, indemnify, and hold harmless the County and its officers, commissioners, employees, volunteers, attorneys, and agents, from any and all costs and expenses, damages, liabilities, demands, causes of action, suits, charges, or legal or administrative proceedings, claims and losses, including, without limitation, attorneys' fees and costs, caused by or arising out of any act or omission of the Business relating to the terms of this Agreement, including but not limited to any Ineligible Expenditures.
20. Recoupment. If the County reasonably determines, in its sole discretion, that all or a portion of the Business's expenditure of Funds is an Ineligible Expenditure, then the Business shall immediately reimburse the County in an amount equal to the amount of the Ineligible Expenditure. The Business shall have 30 days of receipt of the County's determination of an Ineligible Expenditure to reimburse the County for such expense. In the event the County has to enforce this Agreement, it shall be entitled to recover its reasonable attorneys' fees and costs incurred in doing so.
21. Waiver. By accepting these terms and conditions, to the extent allowable by law, the Business waives any and all legal rights or potential claims against Denton County and any governmental official associated with the Program.
22. Responsible Party. The responsible party of the Business ("Responsible Party"), referenced in the Application, shall be the direct contact between the County and the Business. The Responsible Party shall be accountable for the accuracy of the grant application, the representations and warranties made in this Agreement, and the ultimate use of the Funds. Should the County determine, in its sole, reasonable discretion that Funds were used for ineligible purposes, the County shall be entitled to seek reimbursement of all amounts used for ineligible purposes, in addition to all reasonable fees and costs, both direct and indirect, from the Responsible Party as well as the Business.

OTHER

23. Attorneys' Fees and Costs. The County shall be entitled to recover its reasonable and necessary attorneys' fees, costs and expenses, from the Business in the event the County must enforce the terms of this Agreement in any way, including, but not limited to, litigation or mediation to the extent allowed by law.
24. Legal. Grantee agrees that nothing contained herein constitutes or can be construed as legal, tax or business advice.
25. Tax. The Business will receive an Internal Revenue Service Form 1099 from the County relating to the grant award. This does not necessarily mean that the grant to the Business is or is not subject to U.S. federal income tax; the County is unable to opine or offer advice related to tax matters. You may be required to report all or a portion of the grant as income on your income tax return. It is the responsibility of the Business to determine whether the

Funds are taxable and whether the business must report any amount on the appropriate income tax return.

26. Law and Venue. The laws of the State of Texas shall govern this Agreement, except where clearly superseded by federal law. Venue of any dispute shall be in a court of competent jurisdiction in Denton County, Texas.
27. No Assignment. The Business may not assign this Agreement.
28. Entire Agreement. This Agreement supersedes and constitutes a merger of all prior oral and/or written agreements and understandings of the parties on the subject matter of this Agreement and is binding on the parties and their legal representatives, receivers, executors, successors, agents and assigns.
29. Amendment. Any Amendment of this Agreement must be by written instrument dated and signed by both parties.
30. Severability. No partial invalidity of this Agreement shall affect the remainder unless the public purpose to be served hereby is so greatly diminished thereby as to frustrate the object of this Agreement.
31. Survival. All provisions of this Agreement that impose continuing obligations on the parties, including but not limited to payment, agreement purpose, and confidentiality shall survive the expiration or termination of this Agreement.
32. Disclaimer. Nothing contained herein should be considered legal advice or relied upon by the Business.
33. Public Records. Denton County is a governmental body subject to the Texas Public Information Act. Any information submitted to Denton County relating to the grant application or any related matter may be subject to this Act and subject to public release. Denton County has no intention or requirement to release confidential information, such as tax or banking data, unless required to do so by law or legal process.
34. Signature Authority. The signatories hereto represent to each other that they have the full right, power, and authority and have been given any approvals necessary to enter into this Agreement to bind the respective parties for which they sign, and to perform their obligations hereunder, and that the consent of no other parties is needed to fully effectuate this Agreement.

(SIGNATURE PAGE TO FOLLOW)

DENTON COUNTY, TEXAS

By: /s/ The Honorable County Judge Andy Eads
Andy Eads, County Judge

August 14, 2020
Date

[INSERT BUSINESS NAME]

By: _____
Agent or Representative

Printed Name

Printed Title

Date